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601 THIRTEENTH STREET, N.W.

FISH RICHARDSON & NEAVE BOSTON (1916-1969)

> FREDERICK P. F(8H (1855-1930) W.K. RICHARDSON (1859-1951)

WASHINGTON, D.C. 20005

TELEPHONE: 202/783-5070 TELECOPIER: 202/783-2331 BOSTON OFFICE: 225 FRANKLIN STREET BOSTON, MASSACHUSETTS 02110-2804 617/542-5070

> HOUSTON OFFICE: ONE RIVERWAY, SUITE 1200 HOUSTON, TEXAS 77056 713/629-5070

January 27, 1993

Our File: 05000/002001

HAND DELIVER

Ms. Donna R. Searcy
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Comments of Square D Company MM Docket No. 92-266

Dear Ms. Searcy:

Enclosed for filing on behalf of the Square D Company, please find an original and nine (9) copies of comments in the above-captioned Notice of Proposed Rulemaking proceeding.

If you have any questions with regard to the enclosed please do not hesitate to contact the undersigned.

Very truly yours,

Terry G, Main

TGM/bab Enclosures

cc: Square D Company

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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In the Matter of

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992

Rate Regulation

NOTICE OF PROPOSED RULEMAKING

MM Docket No. 92-266

COMMENTS OF SQUARE D COMPANY

Terry G. Mahn, Esq. Fish & Richardson 601 13th Street, N.W. 5th Floor North Washington, D.C. 20005 (202) 783-5070

Its Attorney

TABLE OF CONTENTS

INTRODUCTION	. 2
I. Cable Operator-Provided Equipment and Installation Charges Should Be Unbundled from Basic Tier Service	. 4
II. Operator Charges for Multiple TV Hook-Ups Should Be Based On Actual Costs With Such Charges to Cease When Costs Are Fully Recovered	. 11
CONCLUSION	14



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Before the FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATION OF THE COMMISSION Washington, D.C. 20554

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In the Matter of

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992

Rate Regulation

NOTICE OF PROPOSED RULEMAKING

MM Docket No. 92-266

COMMENTS OF SQUARE D COMPANY

Square D Company ("Square D") through its attorneys, hereby submits these comments in the above-captioned Notice of Proposed Rulemaking ("NPRM").

Square D strongly favors the adoption of cable rules and policies that will permit emerging, competitive markets that are adjunct to the cable television business to continue their growth and development. One such market, in which Square D is actively engaged as an industry leader, involves residential video distribution systems -- also known as home electronics networks. For this technology to proliferate and for consumers to realize the myriad benefits that these networks offer, it is essential for the Commission to adopt competitive safeguards requiring the separation of cable monopoly offerings from products and services that can best be provided on a competitive basis. Square D urges, in this regard, that rules be developed

which require the unbundling of basic tier cable services from operator-provided equipment and installations, and to require cable operators to price such offerings, including multiple receiver connection charges, on the basis of actual costs incurred.

INTRODUCTION

Square D is the manufacturer of an advanced and highly innovative video distribution technology designed for the residential market. Square D's network, known as ELAN, has been certified by the Commission under the Part 15 Rules as a "TV interface device," despite its complex configuration of amplifiers, signal splitters, video modulators and cable wiring runs (see Exhibit 1). Functionally, ELAN may be described as a feature-rich entertainment and information network that combines cable service and other video sources such as VCR and satellite, along with closed circuit television and various audio applications, including telephone, for distribution throughout a subscriber's household.

ELAN is one of several products on the market that compete, to some extent, with the less sophisticated video distribution offerings of cable operators. Over the past three

 $[\]underline{^{1/}}$ See FCC ID: I5WAVSCAM2000 (8/6/91)

FCC ID: I5WAVSCAM2100 (8/21/91)

FCC ID: I5WEPLMDM1000 (5/21/92)

years, Square D has installed over 4,000 ELAN systems nationwide. Other manufacturers have also begun serving these niche markets that, until recently, were largely overlooked by the cable companies. Although the original focus may have been on video service installations, Square D and others now provide an array of home automation and communications services that include closed circuit camera surveillance monitoring, lighting and appliance controls, energy management, and entertainment programming. From an industry that virtually did not exist before 1985, home electronic networks have grown to over \$450 million annually in terms of product sales, with revenues by the year 2000 projected to top \$1 billion.²¹

Square D firmly believes that the market for home electronics networks will thrive and prosper only if the Commission establishes rules that neither impede the delivery of these new offerings nor permit the opportunity for cross-subsidizations by the cable monopoly service providers. Because the success of ELAN and systems like it depends, in part, on the ability of cable subscribers to distribute their video services freely throughout their residence, Square D has direct stake in the outcome of this proceeding. In the comments that follow,

Industry data from Parks Associates (1991). These figures represent high-end controllers and modules, the types of equipment commonly associated with home electronics networks. Sales of low-end controllers and modules used in these networks as well as on a stand-alone basis, are expected to top \$1 billion by 1993.

Square D addresses what it considers to be two of the most important issues confronting home electronic network providers today: (1) cable service unbundling, and (2) multiple receiver hook-up charges.

I. Cable Operator-Provided Equipment and Installation Charges Should Be Unbundled from Basic Tier Service.

In this proceeding, the Commission tentatively concludes that Section 623(b)(3) of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992") calls for equipment and installation rates to be unbundled from basic tier rates and for these to be based on "actual costs." The Commission correctly observes, in this respect, that such unbundling will help to establish an environment in which a competitive market for equipment and installation "may" develop, and seeks comments specifically on the feasibility of such markets developing. It also seeks comments on any safeguards that may be needed to alleviate the potential for increased theft of service or signal leakage due to these competitive offerings. 4/

In reviewing the Commission's unbundling proposal,

Square D is struck by the fact that the Commission's focus seems

 $^{^{2}}$ NPRM ¶ 63.

 $[\]underline{1d}$. n.90.

to rest solely on <u>future</u> market developments. To answer the core question whether competition in third party cable equipment and installation services is feasible, the Commission need only look at the recent developments which have taken place in the industry. As noted above, the market for home electronics networks (of which video equipment and installation services are but a part) has grown dramatically since the mid-1980's. Today, over 4,000 companies compete with a broad array of product and service offerings in nearly every cable market in the country.

Historically, it has been the audio and video professionals who were most commonly associated with third party video installations. Recently, however, electrical contractors, telephone installers and security system technicians have begun entering the business in large numbers. Indeed, it is the vast network of electrical contractors who currently sell, install and service Square D products who are targeted for ELAN offerings. Ironically, some of these same installer groups are often hired

National Count

High End Audio/Visual Installers Telephone Installers	1,500 20K+
Security dealers	15K - 20K
HVAC Dealers	12K
Electricians	unknown

Approximately 2,500 companies have been trained and authorized to install Square D products.

Based on industry data from Parks Associates, the number and types of companies that now compete or have the capability of competing in the installation service market are as follows:

by the cable operators to perform their own high quality installation services.

In short, the question of commercial feasibility of a competitive installation service market has been already established. More significantly, the Commission may have actually presaged this event in earlier rulemaking proceedings. For example, in its 1985 rulemaking dealing with cable system terminal devices, the Commission directly addressed the volatile subject of the operator/subscriber interface and with it the subject of competition in video equipment and installations. In that proceeding, the Commission confronted two apparently conflicting emission standards -- one for cable operators under Part 76, and the other for subscribers under Part 15. Several parties argued for a single standard governed by Part 76 on the grounds that operators were ultimately responsible for controlling leakage from their systems on an "end to end" basis, but the Commission rejected these arguments in favor of a cable subscriber's right to interconnect equipment of its choosing as long as such equipment did not cause the operator's system to exceed the Commission's leakage standards. Interestingly, the Commission also ruled that operator-provided terminal devices would thereafter be required to meet the same emission standards

See Amendment of Part 15 and 76 Relating to Terminal Devices Connected to Cable Television Systems, Report and Order in GEN Docket No. 85-301, 2 FCC Rcd 3304 (1987); See also Memorandum Opinion and Order, GEN Docket No. 85-301, 3 FCC Rcd 6491 (1988).

as subscriber-provided equipment. In cementing this operator/subscriber emissions dichotomy, the Commission both acknowledged and approved the development of a competitive market for subscriber-provided installation services.

In 1991, the Commission again confronted these issues in its "home automation and communication technology" docket.

In that proceeding, which was in response to a request by a national coalition of home builders, manufactures and utility companies who were in the process of developing and constructing "smart houses" across the country, the Commission considered a modification to its Part 15 Rules to facilitate the use and introduction of residential distribution technologies to bring "new levels of convenience to the American public." After reviewing the comments of installers, cable operators and others, the Commission modified its rules to permit installers of residential video distribution systems to avail themselves of more lenient technical standards that then applied only to MATV and cable operator-provided installations.

See Amendment of Part 15 to Enable the Widespread Implementation of Home Automation and Communication Technology, Notice of Proposed Rulemaking, ET Docket No. 91-269, 6 FCC Rcd 5409 (1991).

See Amendment of Part 15 to Enable the Widespread Implementation of Home Automation and Communication Technology, Report and Order, ET Docket No. 91-269, 7 FCC Rcd 4476 (1992), at \P 1.

As demonstrated by these rulemakings, the Commission's awareness of an emerging and growing market for residentially-based video distribution systems is well documented. Square D submits then, that the instant proceeding must focus on ensuring, above all else, that competition in these markets is preserved and protected against possible abuse by cable operators using their monopoly position to leverage market entry.

On similar occasions in the past where the Commission confronted a monopolist engaging, or about to engage in, a competitive activity, decisive steps were taken to put regulatory controls on such entry. Sometimes in the form of unbundling and other times in the form of a separate arms-length subsidiary, the Commission has always been willing to fashion the necessary rules to protect competition in businesses that are threatened by monopoly-providers. The clear need for the unbundling of basic tier services and establishment of rates based on actual costs are regulatory goals that are as important today to competitors like Square D, as was the local telephone company decision in the late 1960's to the emerging competitors in that industry.

Industries in which the Commission adopted specific rules to protect competitive markets include, among others, telephone equipment manufacturing, information services, cellular telephones and customer premise wiring.

Concerning theft of service, Square D notes that the cable industry has managed to deal successfully with this issue in a competitive market place for the past several years. Cable operators routinely utilize addressable technology and/or sophisticated descrambling devices to thwart signal piracy and Square D does not advocate subscriber ownership of such devices without operator permission. Nonetheless, Square D believes it is important to note that the distribution of paid-for signals throughout a residence is not a theft-related activity under the Cable Act of 1992, and subscriber-owned systems that facilitate such distribution are clearly to be permitted. 11/2

On the question of signal leakage, Square D also believes that a competitive installation market will not, per se, exacerbate this problem. As this Commission has repeatedly observed, a cable operator's signal leakage obligations do not extend to subscriber equipment and/or distribution system unless these are owned by the operator. Where a subscriber installs its own video distribution system, the operator will not be responsible for leakage unless the subscriber's system introduces radiation into the operator's plant causing the leakage limits to

^{11/} Section 623(b)(3)(B) of the Cable Act of 1992 contemplates that such activities are to be conducted on a competitive playing field based on actual costs -- implicitly affording subscribers the option of "shopping" for the best deal.

be exceeded. 121 Under such circumstances, the operator would have the legal right to disconnect the subscriber's equipment. 131

Square D's experience in the market causes it to believe that signal leakage from Part 15 compliant subscriber systems will not be a problem. Where the Commission can expect such problems, however, is from systems that have been assembled from non-compliant components and installed without first having been tested. Square D notes that such problems are beginning to surface as untrained installers configure custom-made systems from retail components, and sub-systems that are not subject to any regulatory controls. Accordingly, Square D believes it is essential that the Commission address this compliance issue in the context of this proceeding by warning installers that they will be held responsible for subscriber systems that are not in compliance with the Part 15 Rules and by giving cable operators the right to refuse connections of equipment or installations

Square D raised this issue in MM Docket 91-169 (cable technical standards) and the Commission confirmed that further clarification of its 1988 order was not required. See Review of the Technical and Operational Requirements of Part 76, Cable Television Report and Order, MM Docket 91-169, 7 FCC Rcd 2021 (1992) at ¶ 58.

 $[\]underline{^{13/}}$ See Section 76.617 of Commission Rules.

The Commission faces a similar concern in its modular CPU docket. <u>See</u> Provisions for Introducing Modular Personal Computers and for Facilitating Upgrades of Digital Devices, Further Notice of Proposed Rulemaking, GEN Docket No. 90-413, 7 FCC Rcd 4866 (1992).

that do not comply with Commission rules. In this regard, Square D supports an amendment to Section 76.619 of the Commission's Rules to give operators such authority, similar to that accorded telephone companies to deal with unregistered equipment connected to their networks. 15/

II. Operator Charges for Multiple TV Hook-Ups Should Be Based On Actual Costs With Such Charges to Cease When Costs Are Fully Recovered.

The Commission states that Section 623(b)(3)(B) of the Cable Act of 1992 directs it to establish, on the basis of actual costs, rates for "installation and monthly use of connections for additional television receivers." From this, the Commission tentatively concludes that cable operators should (1) use the same cost methodology used for the installation of other equipment to compute these rates; (2) be limited to recovering only incremental costs if additional receivers are connected at time of initial installation; and (3) recover such costs through one-time charges or charges that end when the operator has recovered all of its costs. Years D fully supports these proposals.

^{15/} See 47 CFR § 68.102.

 $[\]frac{16}{}$ NPRM ¶ 71.

^{17/} Id.

The subject of multiple receiver hook-up charges has been a delicate issue with operators over the years, and has led to considerable confusion among subscribers and installers. In some jurisdictions, for example, operators charge recurring fees for each additional receiver connection irrespective of the costs involved. In other jurisdictions operators charge a flat fee and in still others no charges are made for such connections. The Cable Act of 1992 now seeks to resolve this disparity by requiring that the Commission adopt uniform policies throughout the country.

In developing such rules, Square D believes it is essential that the Commission state unequivocally that which the legislation clearly implies -- to wit, the distribution of cable signals to additional receivers by subscribers using their own equipment or wiring does <u>not</u> constitute theft of service. Furthermore, if such distribution can be accomplished without the use of operator-provided equipment or cabling, no fees may be charged by the cable operator. 18/

Square D challenges the notion that technical "difficulties" associated with signal splitting for additional connections might somehow necessitate that only cable operators

 $[\]frac{18}{}$ It is noted that descrambling equipment is often involved at additional receiver locations requiring some fee to be paid to the operator for the cost of its equipment.

be allowed to provide such connections. 19/ Virtually any installer, trained in only the rudiments of video technology, is competent to split and distribute a cable signal to multiple household locations. The high quality hardware required to distribute video signals is available to trained installers, is "off the shelf" and the engineering is trivial. Hence, the risk to the cable network is virtually non-existent. Indeed, a much greater risk of harm to the network comes from untrained subscribers, using MATV retail products of non-CATV quality, attempting to do their own signal splitting in jurisdictions where operators prohibit or discourage third party installations.

More importantly, such a rule would result in major harm to the competitive markets as it not only would foreclose an essential feature of electronics home networks but would also destroy these networks' economies of sale. If only operators are permitted to split signals, subscribers will be required to obtain their in-house distribution systems from two sources: cable operators for video services and companies like Square D for all other information services. Redundant cabling, overlapping service offerings and a host of interface and interconnection problems doom such a proposal.

 $[\]frac{19}{}$ NPRM ¶ 71 n.103.

For most installations, Square D believes that multiple receiver hook-ups can and should be made available at minimal costs to subscribers. Except when operator-provided descramblers are required, additional hook-up fees should involve only a one-time charge. When descramblers or other operator-provided equipment is required, subscriber charges should be based on actual costs with such costs to cease as soon as they have been fully recovered.

CONCLUSION

Based on the foregoing, Square D urges the Commission to adopt rules that require the unbundling of operator-provided equipment and installation charges from basic tier rates, and to require such charges to be based only on actual costs. In addition, the Commission is urged to restate the subscriber's right to connect additional receivers via its own cabling and to limit operator charges for additional receiver connections solely to the actual operator costs involved. Only by adopting these and the other proposals set forth in this proceeding, will the competitive markets for residential video distribution services

Financed installations, although paid for over time, would still involve a one-time charge.

be protected and new video offerings continue to be introduced in the public interest.

Respectfully submitted,

SQUARE D COMPANY

Terry G. Mann, Esq. Fish & Richardson 601 13th Street, N.W. 5th Floor North Washington, D.C. 20005 (202) 783-5070

Its Attorney

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EXHIBIT 1

ELAN Series HD The Ultimate Home Electronics Network



POWER

POWER

Elan-

Michi Zone Andio Amplifica Hex-1000 Mins no

Moura Constrol Unit

POWER

Elin-

ZONE SOURCE SELECT

STANDBY EN

Live the way you've always wanted to live—with ELAN."

Your home is probably the biggest investment you'll ever make. Of course, your investment in home electronic equipment like stereos, TVs and VCRs can be extremely impressive as well. Ever wonder what it would be like if you could find a way to make all of these investments work together? Ever wonder how much more enjoyable life could be? Or how much more convenient?

Well, we did. That's why we created the ELAN Home Electronics Network.

ELAN is the first home electronics network of its kind. It's the first whole-house system that takes your TV, VCR, phone and stereo — virtually all of the electronic products you already own — and brings them together simply and affordably.

ELAN lets you enjoy audio and video throughout your entire home. It lets you see who's at the front door on your television. It lets you keep an eye on your children in other areas of your home. You can even create a home theater sound system that brings thunderous theater-quality sound into your home. And more.

It gives you a whole new world of convenience. A whole new way to live. A way of life that integrates today's most sophisticated home electronics, and allows you to incorporate whatever electronic wizardry that arrives tomorrow.

It's an experience we call living with ELAN. And, although you've never seen anything like it, you'll recognize it immediately as the way you've always wanted to live.



ELAN Series HD. The high-performance audio, video and phone system.

The ELAN Series HD's flexible, modular design makes it easy to enjoy the sights and sounds of an ELAN Home Electronics Network in your home. Its sleek, handsome components complement your existing audio and video equipment. And the principal components come in standard sizes, for easy mounting in conventional racks. Or you can

simply stack your ELAN Series HD components along with your other audio and video components.

As you look more closely at the ELAN Series HD and its components, you'll see how simply and easily your home can become an ELAN home. A home that's more enjoyable. A home with more convenience than you've ever dreamed.



ELAN[™] makes your telephone a more vital part of your home.

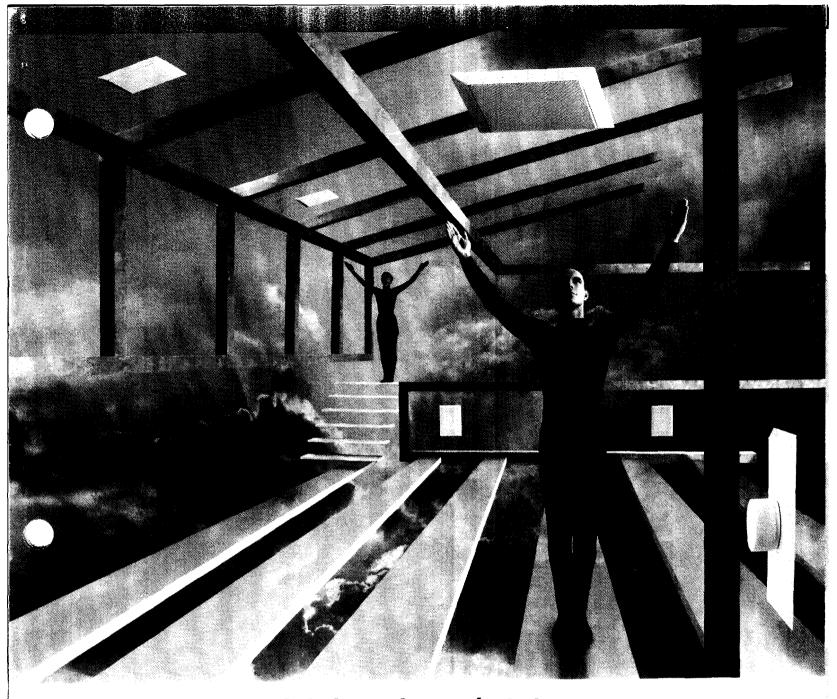
Your telephone can put you in touch with just about any corner of the world. So why not a room at the other end of your house?

When you answer a phone call for someone else, you simply page them, then wait until they pick up a phone and take their call. You can go back to what you were doing. And, if you'd rather take an incoming call in another room, you can put the call on hold and pick it up on any other phone.

The ELAN Series HD allows you to page throughout your entire home from any phone, even if you're already on an outside line. To answer your page, the person you paged simply picks up the nearest phone and begins talking with you.

You can also use any touch-tone phone, in conjunction with the optional ELAN Door Speaker Package, to talk to someone at your front door. You can even operate a gate, door latch or other relay-activated device with your phone.

Your ELAN Series HD distributes multiple incoming phone lines around your home and directs each line to any phone you choose. It also allows you to assign one line in a specific room to a regular phone service line, one line to a business line and another line in the same room to other communication services—like a fax, modem or on-line data services.



ELAN[™] turns your whole house into a giant stereo.

Imagine being able to listen to your stereo in every room of your house at the same time. With the ELAN Series HD, it can happen with whatever stereo system you own. Your favorite radio station, records, tapes or CDs can be heard in as many rooms as you choose. Or, if you prefer, you can send your CD signal to one room, your tape deck to another room and your FM tuner signal to yet another room—all at the same time.

Each musical performance will be yours to enjoy through discreet in-wall or ceiling speakers that can be painted to blend quietly into the background of your decor.

You: door chimes also ring over your ELAN speakers, momentaril muting whatever music or other audio that may be playing.

And, the volume and source equipment can be controlled individually from every room or zone so each member of your family can enjoy the sound as they choose. Or they can turn it off completely. When you select the whole-house music mode, your whole house becomes a "giant stereo," providing you with seamless sound, where you can move from room to room and enjoy the entire performance.



ELAN[™] puts a new world of video throughout your home.

The ELAN Series HD also distributes high-quality video, including VCR, laser disc, cable and satellite to every TV in your home. You can even watch what's playing on your favorite cable channel in the family room while someone else plays a videotape on the family room VCR and watches it on a TV in another room.

Your Home Electronics Network provides enhanced home security with unobtrusive closed circuit cameras. Just set your TV to a predetermined channel to see and hear

who's at the front door or, with additional cameras, monitor other rooms—even the nursery, your pool or any outside part of your home.

For the ultimate home audio-video experience, the ELAN Series HD lets you create true home theater. Strategically positioned speakers and individual high performance amplifiers surround your family and friends with thunderous theater-quality sound, allowing you to enjoy movies in your home the way you used to enjoy them only at the movies.